

REMARKS/ARGUMENTS

Pending claims 31-37, 39-41, 43-51, 53, and 55-63 stand rejected under 35 U.S.C. §103(a) over U.S. Patent No. 6,324,644 (Rakavy) in view of U.S. Patent No. 6,161,177 (Anderson), and U.S. Patent No. 6,202,091 (Godse), and in further view of U.S. Patent No. 5,483,649 (Kuznetsov). Applicant respectfully traverses the rejection.

First, as to dependent claims 57-63, nowhere are these claims mentioned in the rejection or is any reference to the prior art made with respect to these claims. Accordingly, a *prima facie* case of obviousness has not been made with respect to these claims and these claims are patentable as matter of law. That is, in rejecting claims under 35 U.S.C. §103, the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). Thus, a conclusion that the claimed subject matter is *prima facie* obvious must be supported by evidence, as shown by some objective teaching in the prior art to combine the relevant teachings of the reference to arrive at the claimed subject matter. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed Cir. 1988). As the Office Action has not set forth a *prima facie* case of obviousness with regard to claims 57-63, Applicant is under no obligation to controvert such an unsupported conclusion. MPEP §2142.

Further, as to independent claim 51, the Office Action fails to set forth a *prima facie* case of obviousness with respect to this claim as well, as the Office Action nowhere identifies any teaching or suggestion in the prior art for the claimed subject matter of first and second BIOS modules stored in different storages of a system. Because the Office Action entirely fails to set forth any teaching or suggestion in the prior art to meet this claimed subject matter, a *prima facie* case has not been made, and claim 51 and the claims depending therefrom are patentable. MPEP §2142.

As to independent claims 31 and 40, none of the cited references anywhere teach or suggest requesting different levels of authentication information from a user based on a system state indicative of connection to a network. In this regard, the Office Action concedes that neither the primary reference, Rakavy, nor the secondary references Anderson or Godse anywhere teach or suggest authenticating a user. Instead, the Office Action purports to rely on Kuznetsov, which the Office Action contends teaches a file protection system to monitor security of requests. Office Action, p. 4. These requests are requests for disk drive access, however, not requests for user authentication. Kuznetsov, col. 5, lns. 43-45

Further, nowhere does Kuznetsov teach or suggest requesting different levels of authentication information from a user based on a system state indicative of a connection to a network. Instead, the cited portions of Kuznetsov merely teach that a protection program includes BIOS, operating system and driver level protection. The only mention made in Kuznetsov of requesting authentication information is the mere request for a user password. Kuznetsov, col. 9, lns. 55-60. However, Kuznetsov only teaches that a user password is requested. There is no teaching or suggestion in Kuznetsov of requesting different levels of authentication, and certainly not requesting such different levels based on a system state indicative of a connection to a network. Accordingly, the proposed combination fails, and claims 31 and 40 and the claims depending therefrom are patentable over the proposed combination.

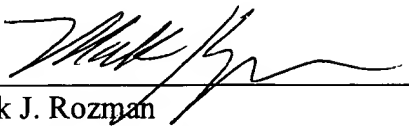
Furthermore, the Office Action fails to provide any legally proper motivation to combine the references. Instead, the Office Action has engaged in the hindsight-based obviousness analysis that has been widely and soundly disfavored by the Federal Circuit. In order to prevent a hindsight-based obviousness analysis, the Federal Circuit requires that "to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant." *In re Kotzab*, 55 U.S.P.Q.2d 1313, 1316-17 (Fed Cir. 2000).

No such showing is present here. In this regard, there is no motivation to combine Rakavy, which is directed to a network enhanced BIOS system, with Anderson, which is directed to a method for detecting or reprogramming BIOS. This is so, as nowhere does Anderson relate in any way to the network-type issues addressed in Rakavy. Furthermore, there is no motivation to further combine these references with Kuznetsov, which is directed to a hardware protection mechanism. Nor does the Office Action anywhere indicate the manner in which the hardware protection mechanism of Kuznetsov must be modified to be used in connection with the other references. Accordingly, claims 31 and 40 and their dependent claims are patentable.

In view of these remarks, the application is now in condition for allowance and the Examiner's prompt action in accordance therewith is respectfully requested. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504.

Respectfully submitted,

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